

## BEFORE THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA

Docket No.: 2020-229-E

Dominion Energy South Carolina,  
Incorporated's Establishment of a Solar Choice  
Metering Tariff Pursuant to S.C. Code Ann.  
Section 58-40-20 (See Docket No. 2019-182-E)

**INTERVENOR ALDER ENERGY  
SYSTEMS, LLC'S RESPONSE TO  
DESC'S PETITION FOR REHEARING**

Intervenor Alder Energy Systems, LLC ("Alder Energy") responds to Dominion Energy's South Carolina, Inc.'s ("DESC") petition for rehearing and/or reconsideration, filed on June 8, 2021 (Matter Id. 300610) (the "Petition"), as follows.

## INTRODUCTION

The Petition seeks rehearing and/or reconsideration of Order 2021-391 (the "Order"), which represents the South Carolina Public Service Commission's (the "Commission") decision on the merits in the docket.

Alder Energy incorporates into the instant response by this reference, all arguments, findings and citations made by and contained within, the joint response of South Carolina Coastal Conservation League, Upstate Forever, Southern Alliance for Clean Energy, Vote Solar, North Carolina Sustainable Energy Association, and Solar Energy Industries Association filed on June 17, 2021 (Matter Id. 300886) (the "Joint Response"). While expressly joining in the Joint Response, Alder Energy responds here to make additional arguments and to separately address matters germane to non-residential customer generation.

In addition to those reasons stated in the Joint Response, the Commission should deny the Petition on the following grounds:

- I. THE COMMISSION'S CONCLUSIONS WERE BASED UPON COMPETENT AND SUBSTANTIAL EVIDENCE IN THE RECORD, WHICH DESC ATTEMPTS TO RELITIGATE *IN ERROR*.**
- II. THE COMMISSION'S CONCLUSIONS DO NOT RELY ON ITS PURPORTED CHARACTERIZATION OF COST SHIFT, NOR EXCLUSIVELY UPON BALANCING ACT 62'S LEGISLATIVE INTENT.**

### BACKGROUND

The Order rejects DESC's proposed 'Small General Service Solar Choice Tariff' for non-residential customer-generation ("Proposed Non-residential Tariff"). The Order adopts, in its place, a solar choice tariff providing that non-residential customers generators will take service under Rate 16 with the following net metering characteristics: (1) annual netting; (2) excess peak generation credited against on-peak rates and rolled over month-to-month; and (3) annual excess net exports applied as a bill credit at the avoided cost rate determined by 2019-182-E, as amended.

The Petition assigns seven purported errors to the Order: (i) it prohibits recovery of avoided cost credits; (ii) it does not make a distinction between RECs arising from behind the meter consumption and RECs from exported energy; (iii) it associates elimination of cost shift with recovery of lost revenue; (iv) it finds the subscription fee and basic facilities charge to be a penalty; (v) it unevenly applies the evidentiary standard; (vi) it errs in determining what cost shift is eliminated; and (vii) it relies on unquantified benefits of solar. The Petition does not assign error to the Commission's utilization of Rate 5 (residential) or Rate 16 (non-residential).

The Commission should deny the Petition on the following grounds.

## ARGUMENT<sup>1</sup>

### Standard of Review

The purpose of a petition for rehearing is not “just to have the case tried . . . a second time.” Order No. 2019-454 p. 11-12 (finding that the principles of a petitions for rehearing in South Carolina courts of review are persuasive with the Commission and citing *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234, 238 (1933)) (internal citations omitted). Instead, the purpose is to “aid the Court in deciding correctly a case heard by it.” *Arnold*, 168 S.C. 163 at 172. Accordingly, the petition must identify “the points supposed to have been overlooked or misapprehended” by the Commission and cannot be based on new grounds not raised during litigation. *Kennedy v. South Carolina Retirement System*, 349 S.C. 531, 532 (2001); Order No. 2019-122 p. 3 (citing *Kiawah Prop. Owners Group v. Pub. Serv. Comm’n*, 359 S.C. 105, 113, 597 S.E. 2d 145, 149 (2004)).

S.C. Code Ann. Reg. 103-825(4) (“Section 103-825(4)”) prescribes the form of petitions for rehearing and/or reconsideration. The petition must establish three elements “clearly and concisely:”

- (a) The factual and legal issues forming the basis for the petition;
- (b) The alleged error or errors in the Commission order; [and]
- (c) The statutory provision or other authority upon which the petition is based.

S.C. CODE ANN. REG. 103-825(4). The Commission rejects petitions for rehearing and reconsideration based merely on “[c]onclusory statements that amount to general and non-specific allegations of error[.]” as not satisfying the demands of Section 103-825(4). Order No. 2020-315 p. 13; Order No. 2019-122 p. 3.

Petitioner’s burden to show the case was wrongly decided is a high one. Commission orders are presumptively correct on appeal, and South Carolina courts of review “shall not substitute [their] judgment for that of the [Commission] as to weight of evidence on questions of fact.” *Palmetto All.*,

---

<sup>1</sup> As stated above, Alder Energy raises all arguments and citations discussed in the Joint Response, as if specifically raised here. Those arguments and citations are omitted, expressly anyway, for the purpose of judicial economy, among other reasons.

*Inc. v. S.C. Pub. Serv. Com.*, 282 S.C. 430, 432, 319 S.E. 2d 695, 696 (1984) (citing S.C. Code Ann. § 1-23-380(g) (1976), as amended [exhaustion of administrative remedies under Administrative Procedures Act (“APA”)]). “The final determination of witness credibility and the weight to be accorded evidence is reserved to the Full Commission.” *Ross v. Am. Red Cross*, 298 S.C. 490, 492, 381 S.E.2d 728, 730 (1989)) (reviewing decision of the Workers’ Compensation Commission under APA).

The ‘substantial evidence’ test for review of Commission decisions under APA:

is not a mere scintilla of evidence nor evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the administrative agency reached or must have reached in order to justify its action.

*Miller by Miller v. State Roofing Co.*, 312 S.C. 452, 454, 441 S.E.2d 323, 325 (1994).

Petitioner failed to meet its burden to challenge the Order, generally, and specifically, with respect to its Proposed Non-residential Tariff, as set out further below.

**I. THE COMMISSION’S CONCLUSIONS WERE BASED UPON COMPETENT AND SUBSTANTIAL EVIDENCE IN THE RECORD, WHICH DESC ATTEMPTS TO RELITIGATE *IN ERROR*.**

**A. Penalty**

The Commission held DESC’s Proposed Non-residential Tariff is a penalty. Its conclusion should be sustained, as it is supported by substantial and competent evidence in the record.

The Order’s finding that the tariff punishes non-residential customer-generators relies on testimony from Witness Tom Beach (Order p. 98), including his opinion: “the Subscription Fee in . . . DESC’s Small General Service Solar Choice Tariff is a penalty because, like ORS, DESC failed to consider avoided transmission-and-distribution benefits from nonresidential customer generation.” (Order p. 96 (citing Tr. p. 598, ll. 23 – Tr. p. 600, ll. 11-19)) (emphasis added). The Commission further determined, in its discretion, that a penalty occurs under S.C. Code Ann. § 58-40-20(G)(2)

when a customer-generator pays more to the utility with solar than without, taking into consideration relevant parameters like non-bypassable fees. (Order 18.)

The Commission considered, but does not agree with DESC, that these benefits are unquantified or unrecognized. (*See* Petition 24-26 [DESC issue VII.].) The Order identifies evidence to the contrary, highlighting Witness Beach’s testimony discussing that customer-generation occurs at the load source, which, “frees up space in the utility’s wires that it can use to serve other customers[,]. . . transmission-and-distribution costs are avoided by distributed solar; you’re putting generation right down where the load is, and you need a few hundred feet of wires instead of, you know, hundreds of miles of wires.” (*See* Order 46-47 (citing Tr. p. 789, l. 11 – p. 790, l. 14).) The Order further describes that recognition of these benefits was a primary driver of the now Commission-approved settlement<sup>2</sup> between the utilities and intervenors in the Duke Energy companies’ solar choice tariff proceeding. (Order 96.)

The Commission correctly decided, with the aid of Beach’s testimony and evidence, that a tariff failing to account for a customer-generators’ avoided transmission-and-distribution benefits results in a non-residential customer generator paying more to DESC with solar, than without. The Commission’s preference of Beach’s testimony on the issue is its province, alone. *See Palmetto All., Inc. v. S.C. Pub. Serv. Com.*, 282 S.C. at 432. Moreover, as DESC readily admits, its Proposed Non-residential Tariff cannot be reduced to its constituent parts without dismantling the whole. (Tr. p. 231-7, p. 304 ll. 15-23 (changing one of the three components of DESC’s solar choice tariff requires adjustment of the other components) [Everett].)<sup>3</sup> In other words, if the Subscription Fee is a penalty, the entirety of DESC’s Proposed Non-residential Tariff is a penalty.

---

<sup>2</sup> Order No. 2021-390.

<sup>3</sup> Original citations to the record (i.e., not contained with the Order) are to the “scoped draft” provided by the Court Reporter.

## B. Market Disruption

DESC Witness Rooks testified that DESC's calculation of the cost shift posed by non-residential customer-generation was a mere \$332,880.<sup>4</sup> (Tr. p. 490 l. 18-20.) The Commission held that this cost-shift, *if any*, “does not justify disrupting the already ‘niche’ nonresidential distributed-generation market.” (Order 98.) Its conclusion should be sustained, as it is supported by substantial and competent evidence in the record.

The Order's conclusion is based on the Commission rejecting DESC's evidence to the contrary. The Commission found DESC Witness Robinson's testimony, relative to South Carolina's nonresidential distributed-generation market, to be “unpersuasive” and “not well taken.” (*Id.*) The Commission disagreed with DESC Witness Robinson that non-residential solar was not sensitive to regulatory change, and further, found that DESC Witness Robinson undersold non-residential market disruption by modeling “much smaller systems” than those actually proposed and installed in the marketplace. (*Id.*)

On the other hand, the Commission accepted Alder Energy Witness Zimmerman's testimony that DESC's Proposed Non-residential Tariff would be “detrimentally harmful” to non-residential solar. (*Id.*) DESC argues *in error* that Alder Energy's evidence fails for lack of “quantitative analysis.” (Petition 26 n.9 [DESC issue VII].) Its attack, however, is not supported by the record. Alder Energy admitted as evidence a confidential, late-file exhibit presenting the underlying data upon which the company's conclusion rests. (HE. 10.) Hearing Exhibit 10 summarized the anticipated payback periods for all non-residential PV systems that Alder Energy sold in DESC territory. (*Id.*) The records Hearing Exhibit 10 summarized were produced to DESC in discovery and—without any duty to do

---

<sup>4</sup> Such a cost shift, *if any*—representing a mere (28) cents per bill across a diverse rateclass—was a shocking revelation to Alder Energy. (Tr. 490.) The severity of punishment levied by DESC's Proposed Non-residential Tariff against non-residential solar in no way balanced or reflected the alleged cost.

so—Alder Energy produced a copy of Hearing Exhibit 10 to DESC contemporaneously with its filing.<sup>5</sup> DESC had every opportunity to attack the credibility of such evidence, but did not by way of motion to strike or otherwise. DESC’s failure to attack such evidence during litigation waives its claim raised here by Petition for the first time. *See Kennedy*, 564 S.E. 2d 322; Order No. 2019-122 p. 3.

The Commission correctly decided—with the aid of Alder Energy’s competent and substantial evidence, and while expressly rejecting DESC’s evidence—that the \$332,880 cost shift could not support such a penal tariff. (*See* Order 98-99.) DESC may not supplant the Commission’s view of the evidence with its own, and offers no support for its position that the Commission applied the evidentiary standard “unevenly,” other than merely restating the evidence at trial. (Petition 17-23 [DESC issue V.].) *Holcombe v. Dan River Mills/Woodside Div.*, 286 S.C. 223, 224, 333 S.E.2d 338, 339 (Ct. App. 1985) (“Where there was a conflict in the evidence, the findings of fact of the commission as triers of the fact were conclusive.”).

In sum, the Petition should be denied because the Commission’s conclusions were based upon competent and substantial evidence in the record. DESC’s arguments to the contrary are merely improper attempts to relitigate the dispositive issues in the case, *in error*, and DESC’s failure to support its arguments are the very conclusory allegations precluded by S.C. Code Ann. Reg. 103-825(4).

## **II. THE COMMISSION’S CONCLUSIONS DO NOT RELY ON ITS PURPORTED CHARACTERIZATION OF COST SHIFT, NOR EXCLUSIVELY UPON BALANCING ACT 62’S LEGISLATIVE INTENT.**

The Petition argues, *in error*, that the Commission should reconsider the Order because it purportedly equates cost shift with DESC’s lost revenue. (*See, e.g.*, Petition 10-13 [DESC issue III.].) Alder Energy disputes the merit of such position; however, the Commission should pass on it because the Order contemplates that the cost shift calculated by DESC itself could conceivably be accurate.

---

<sup>5</sup> Alder Energy produced Hearing Exhibit 10 voluntarily to DESC’s counsel via email on March 17, 2021 as supplementary production to Alder Energy’s responses to DESC’s written discovery.

(*See* Order 98-99.) The Order, thus, does not rest on the method of calculation, but the amount purportedly calculated by DESC, which—in any event—cannot justify the penalty DESC levies through its Proposed Non-residential Tariff. *See supra*.

The Petition further argues, *in error*, that the Commission should reconsider the Order because it weights solar industry market factors—which represent merely the “broad intent” of the legislature—equally with “a specific directive” to eliminate cost shift. (Petition 22 [DESC issue VI].) Even taken as true—a point Alder Energy disputes—the Commission’s conclusions do not rest, exclusively, on the legislative intent factors codified at S.C. Code Ann. § 58-40-20(A). The Commission also offset the need to eliminate cost shift with the “specific directive” of ‘ensuring access’ to solar, under S.C. Code Ann. § 58-40-20(G)(1) (“Section 58-40-20(G)(1)”). (Order 10-11, 16-17.) To that end, the Order cites DESC Witness Kassis’s admission that ‘access’ “requires, in part, ‘favorable economics for nonresidential NEM customers.’” (Order 10-11; 94 (citing Tr. P. 73 l. 8-14).) As previously discussed, the Commission correctly rejected DESC’s position that its Proposed Non-residential Tariff would not dismantle non-residential solar in South Carolina. DESC’s argument, thus, works against it here, where the Commission relied upon a “specific directive,” just not the one DESC notes.

In sum, the Petition should be denied because the Commission’s conclusions were either based upon, or could possibly be based upon, other facts and conclusions which DESC does not complain of as error. *See* Order No. 2019-454; *South Carolina Tax Comm’n v. Gaston Copper Recycling Corp.*, 316 S.C. 163, 170, 447 S.E.2d 843, 847 (1994) (holding an appellate court will affirm where an appellant fails to appeal the alternative ground of a trial court’s ruling); *Biales v. Young*, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993) (holding the failure to challenge an alternative ground for a holding constitutes abandonment of the issue and precludes consideration on appeal).

## CONCLUSION

The Commission should deny the Petition on the foregoing grounds.



Respectfully submitted,

June 20, 2021

TURNER PADGET GRAHAM & LANEY, P.A.

Greenville, South Carolina

By: /s/ R. Taylor Speer  
R. Taylor Speer  
South Carolina Bar No. 100455  
E-mail: tspeer@turnerpadget.com  
P.O. Box 1509  
Greenville, South Carolina 29602  
Telephone: (864) 552-4600  
Fax: (864) 552-4620

TPGL 11262785v4

*Attorneys for Alder Energy Systems, LLC*

I HEREBY CERTIFY on June 20, 2021 a true and correct copy of the foregoing was served via electronic mail upon the parties of record, in accordance with the service list attached hereto.

TURNER PADGET GRAHAM & LANEY, P.A.

By: /s/ R. Taylor Speer

SERVICE LIST

Andrew M. Bateman

Email: abateman@ors.sc.gov

Bess J. DuRant

Email: bdurant@sowelldurant.com

Carri Grube Lybarker\*

Email: clybarker@scconsumer.gov

David L. Neal

Email: dneal@selcnc.org

Frank Knapp, Jr

Email: fknapp@knappagency.com

Jeffrey M. Nelson

Email: jnelson@ors.sc.gov

Jeffrey W. Kuykendall

Email: jwkuykendall@jwklegal.com

Jeffrey W. Kuykendall\*

Email: jwkuykendall@jwklegal.com

Jenny R. Pittman

Email: jpittman@ors.sc.gov

K. Chad Burgess

Email: chad.burgess@dominionenergy.com

Katherine Lee Mixson\*

Email: kmixson@selcsc.org

Matthew W. Gissendanner

Email:

matthew.gissendanner@dominionenergy.com

Peter H. Ledford

Email: peter@energync.org

R. Taylor Speer

Email: tspeer@turnerpadget.com

Robert P. Mangum

Email: rmangum@turnerpadget.com

Roger P. Hall\*

Email: rhall@scconsumer.gov

Tyler Fitch

Email: tyler@votesolar.org